

**Fair Political Practices Commission**  
**MEMORANDUM**

**To:** Chairman Johnson, Commissioners Hodson, Huguenin, Leidigh and Remy  
**From:** Scott Hallabrin, General Counsel  
**Subject:** Prenotice Discussion of Amendments to Regulation 18360 and 18361  
**Date:** January 25, 2008

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Proposed Commission Action and Staff Recommendation: Approve publication of notice for amendment of Regulations 18360 and 18361 at the Commission meeting in April 2008.

Reasons for Proposal:

Regulation 18360. Proposed amendments to Regulation 18360 were presented to the Commission at the January 2008 meeting and the Commission directed staff to bring them back for further discussion at the February 2008 meeting.

As indicated at the January meeting, the proposed amendments bring the regulation into conformity with Government Code Section 83115. Section 83115 provides as follows:

Upon the sworn complaint of any person or on its own initiative, the commission shall investigate possible violations of this title relating to any agency, official, election, lobbyist or legislative or administrative action. Within 14 days after receipt of a complaint under this section, the commission shall notify in writing the person who made the complaint of the action, if any, the commission has taken or plans to take on the complaint, together with the reasons for such action or nonaction. If no decision has been made within 14 days, the person who made the complaint shall be notified of the reasons for the delay and shall subsequently receive notification as provided above.

This statute requires that when a person files a complaint signed under penalty of perjury alleging violations of the Act, the Commission must inform the person within 14 days of the action it intends to take on the complaint and the reasons for the action. If, at the end of the 14-day period, the Commission has not decided what action to take, it must, under the statute, inform the person of the reasons for the delay and provide the person with updated information at 14-day intervals until it finally decides on a course of action.

Existing Regulation 18360 sets forth the procedures the Commission follows to comply with Section 83115. In addition to several technical revisions, staff believes the

regulation needs to be substantively modified in several respects. Discussed below are the recommended changes to the regulation, including a description of additional changes recommended at the Commission's meeting in January. Modifications to the regulation since the January meeting are indicated in bold type and, where appropriate, double-underline/strikeout.

Subdivision (a) of the existing regulation only applies the formal complaint process to complaints alleging violations of the Act at the state level. Section 83115 does not confine its application to alleged state-level violations. Therefore, staff proposes that the regulation be modified to apply the complaint process to any alleged violations of the Act, whether at the state or local level. Staff also proposes adding language to clarify that the Commission may investigate complaints on its own initiative.

Subdivision (b) of the existing regulation permits a formal complaint to be filed by use of either the Commission's own form or a document created by the complainant that includes specified minimum information. Staff has developed a formal complaint form, available online, to ensure consistency in format and save staff time in processing these complaints. Also, since the formal complaint is signed under penalty of perjury, staff proposes adding a provision requiring that a formal complainant state in the complaint the basis for his or her personal knowledge that the allegations are true and correct.

Subdivision (c) of the existing regulation permits persons to file "informal" complaints with the Commission. The statute makes no mention of informal complaints and the regulation does not specify their format. Staff proposes modifying the regulation to permit a person who does not desire to file a formal complaint to supply information concerning possible violations to the Commission by telephone and, at the complainant's option, do so anonymously. This will save staff time in not only processing unnecessary paper but also in obtaining more focused information on the alleged violation. As clarified in subdivision (a), the Commission retains the ability to "investigate possible violations," pursuant to Section 83115, "on its own initiative" and can use this focused information to do so.

Also, the existing regulation requires staff to provide the Commissioners with unspecified information on informal complaints on a regular basis (subdivision (c)) and provide Commissioners with a copy of each formal complaint (subdivision (d)).

To avoid potential due process issues, staff believes the Commissioners should be provided with the minimal information necessary to inform them of the matters under consideration by the Enforcement Division. Therefore, staff proposes amending the regulation to define exactly what information will be provided to the Commissioners on both formal complaints and matters the Commission is pursuing on its own initiative. The amendments also clarify that a Commissioner may request a copy of any formal complaint, unless providing the complaint will compromise his or her neutrality in that matter.

Subdivisions (e) through (i) of the existing regulation require the Commission and staff to engage in a potentially elaborate process to arrive at a decision on the action to take on the formal complaint and notify the complainant of that decision. The process could involve as many as three Commission closed sessions and internal deliberations of indeterminate length. Staff believes most of these procedures are unduly complicated, unnecessarily consume time of the Commission and staff, pose serious due process concerns, and delay providing the information to the complainant required by Section 83115.

Staff therefore proposes eliminating this process and amending the regulation to instead provide that the Executive Director's response to the complainant as set forth in new subdivision (f) serve as the Commission's statutorily-required response to the formal complaint. When the Commission informs the complainant it will investigate the complaint, the letter will caution the complainant that the culpability of the person who is the subject of the complaint has not been determined. When the Commission informs the complainant it will take no action on the complaint, the letter will indicate that the complainant can submit additional information. Also in subdivision (f), staff proposes providing all persons who are the subject of the formal complaint with a copy of the complaint unless, based upon a recommendation from the General Counsel and Chief of Enforcement, the Executive Director decides to withhold all or part of the information in the complaint, and withholding the information is permitted under law. In some situations, making all or part of the formal complaint public could jeopardize an investigation or violate some other provision of law. This provision allows the Executive Director the flexibility to account for those situations and makes clear that the subject of the complaint will be informed when information is withheld and the reasons for it. This provision also states that the same information will be withheld from members of the public who request copies of the complaint.

In new subdivision (g), staff proposes providing a person who files a formal complaint with continuing information on the status of the case after the Enforcement Division commences an investigation of the complaint.

Staff proposes maintaining the first sentence in subdivision (i) of the existing regulation (permitting a complainant who disagrees with the Commission's response to direct a request for reconsideration to the Chairman). Under the proposed amendments, this would now appear, with slight modifications, in subdivision (h).

Regulation 18361. Regulation 18361 currently permits the Executive Director, when his or her impartiality may be compromised, to delegate duties under the enforcement provisions of Regulations 18361.1 through 18361.8 to the General Counsel or a Legal Division attorney. Staff proposes amending Regulation 18361 to permit the same for the Executive Director's duties under Regulation 18360.